

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ELIZANDRA ELIZONDO

Plaintiff

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vs.

Civil Action No. 7:16-cv-81

UNDERWRITERS AT LLOYD'S,
LONDON and JOSE LOPEZ

Defendants

DEFENDANT UNDERWRITERS AT LLOYD'S, LONDON'S NOTICE OF REMOVAL

Defendant Ace Global Markets, Syndicate No. AMG 2488 (hereinafter referred to as “Underwriters”), gives notice of removal of this civil action from the County Court at Law No. 8, Hidalgo County, Texas, to this Court.

1. Underwriters were served with process on January 25, 2016. Therefore, this Notice for Removal is timely filed under 28 U.S.C. §1446(b) within 30 days after the receipt by Underwriters of the first notice of the Plaintiff's Original Petition. Defendant Jose Lopez was served with process on January 12, 2016.

2. This action is one of a civil nature for damages caused by alleged wrongful acts of Defendants in the investigation and payment of losses in Hidalgo County, Texas under a policy of insurance.

3. Elizandra Elizondo, the Plaintiff, is a citizen of Texas and resides in Hidalgo County, Texas.

4. Underwriters are all foreign citizens. Specifically, Syndicate No. AMG 2488 holds 100% of the risk and has no Names residing in Texas. Defendant Lopez is a citizen of Texas and has been improperly jointed in an attempt to defeat diversity. These are the only defendants to the lawsuit.

5. There is complete diversity of citizenship among Plaintiff and Underwriters, and Underwriters removed this case to federal court because Defendant Lopez is an improperly joined, non-diverse party against whom Plaintiff have no possibility of recovering.

6. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$75,000.00, giving rise to original federal court jurisdiction pursuant to 28 U.S.C. §1332. Paragraph XI of Plaintiff's Original Petition states "Plaintiff seeks monetary relief, the maximum of which is over \$100,000 but not more than \$200,000."

7. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

8. The doctrine of improper joinder is well recognized in the Fifth Circuit, and the diverse party can remove the case to federal court when there is no possibility of recovery by the plaintiff against the non-diverse, improperly joined defendant. *E.g., Burden v. General Dynamics Corp.*, 60 F.3d 213, 217 (5th Cir. 1995). This "depends upon and is tied to the factual fit between the plaintiff's allegations and the pleaded theory of recovery." *Griggs v. State Farm Lloyds*, 181 F.3d 694, 701 (5th Cir. 1999).

9. "Threadbare" allegations (those that offer nothing "upon which to draw a reasonable inference" that a plaintiff is entitled to relief from the non-diverse defendant) are "woefully inadequate" for the court to predict that recovery might be possible against a non-diverse defendant on the claims asserted. *Bart Turner & Associates v. Krenke*, 3:13-CV-2921-L, 2014 WL 1315896 (N.D. Tex. Mar. 31, 2014).

10. Noteworthy, is the fact that a petition filed in Harris County by Plaintiff's counsel against Underwriters and a different adjuster is virtually identical to the petition in this matter. A

true and correct copy of the petition in the other suit is attached as Exhibit "A" and incorporated herein so the Court may take judicial notice of it.

11. Plaintiff's Original Petition fails to state a claim against Defendant Lopez for his work as the adjuster on the property claim made the basis of the suit, and the fact alone that this form-petition has been used in other suits, with essentially only a difference in the parties' names, addresses and dates, demonstrates that the Petition's allegations are threadbare, conclusory, boilerplate, offer no specificity as to the true conduct of non-diverse Defendant Lopez, and lack the requisite "factual fit" against any of the causes of action pled against him. No possibility exists that Plaintiff can establish a cause of action against Lopez, and he was improperly joined solely for the purpose of defeating diversity jurisdiction. *See generally Messersmith v. Nationwide Mut. Fire Ins. Co.*, 3:13-CV-4101-P, 2014 WL 1347872 (N.D. Tex. April 7, 2014); *Dalton v. State Farm Lloyd's Inc., et al*, No. H-12-3004, 2013 WL 3157532, at *6 (S.D. Tex. June 19, 2013); *see also Ghoman v. New Hampshire Ins. Co.*, 3-01-CV-0092-BD(L), 2001 WL 376460 (N.D. Tex. Apr. 11, 2001) (regarding a wind/hail claim in which the court determined the insurer's agent was improperly joined because the petition lacked details supporting the general allegations that the agent misrepresented terms or benefits of the policy as alleged).

12. The United States District Court has original jurisdiction under 28 U.S.C. §1332. This action is removable under 28 U.S.C. §1441(a) and (b).

13. Underwriters will promptly file a copy of this Notice of Removal with the clerk of the state court where the suit has been pending.

14. Pursuant to Local Rule 81, the following documents are attached hereto:

- a. The corporate citation served on Certain Underwriters at Lloyds;

- b. The corporate citation served on Jose Lopez;
- c. Plaintiff's Original Petition;
- d. Defendant ACE Global Markets, Syndicate No. AMG 2488's Special Exception and Original Answer to Plaintiff's Original Petition;
- e. Defendant Jose Lopez's Special Exception and Original Answer to Plaintiff's Original Petition;
- f. An index of matters being filed;
- g. A list of all counsel of record, including addresses, telephone numbers and parties represented; and
- h. Docket sheet from state court action.

Defendant Ace Global Markets, Syndicate No. AMG 2488, requests that the above-described action now pending in the County Court at Law No. 8 of Hidalgo County, Texas be removed to this Honorable Court.

Respectfully submitted,

/s/ Frank A. Piccolo
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CERTIFICATE OF SERVICE

In compliance with Rule 5 of the Federal Rules of Civil Procedure, I certify that on this the 18th day of February 2016, a true and correct copy of the above and foregoing document was served on all known counsel of record:

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/s/ Frank A. Piccolo
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